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MEMOIR

OF THE

ASSASSINATION

OF

HENRY RIVES POLLARD.

PREPARED BY HIS BROTHER,
EDWARD A. POLLARD.

LYNCHBURG:
SCHAFFTER & BRYANT, PRINTERS.
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NARRATIVE OF THE ASSASSINATION.

ON the 21st of November, 1868, there appeared in the *Southern Opinion*, a paper published weekly in Richmond, Virginia, and owned and edited by HENRY RIVES POLLARD, an account of the elopement of a daughter of William H. Grant, a tobacconist in that city. The article, divested of some playfulness and exuberance of style—the work of the reporter—made no imputation on the chastity of the person principally named in it, (at least not such as an ordinary reader could detect), but seemed to point to a clandestine marriage, and the elopement of a daughter from her parents' control, to pursue a fugitive or truant husband. It appears that the facts, as alleged in the article, had been communicated to Mr. Pollard by his reporter, and, also, by other parties. Says J. M. Hanna, the reporter: "I was at dinner at the Ballard House on a day of the week previous, when a gentleman who sat at the same table with me remarked: 'Did you hear of the elopement?' I had not, and asked of him to whom he referred. The gentleman then named the parties, and related all the facts within his knowledge. Dinner over, I returned to the office. Mr. Pollard was not there; he had gone to his residence on the Grove road, but a note from him lay on my desk. Its contents were an urgent request to visit him at his house that evening, as he had some important items for communication to me. I visited him. I met him alone in my own room, as he seemed anxious that the servants should not overhear anything that might pass between us. He had some notes in his hand, and when I spoke of the case I had heard at the Ballard House, he remarked quickly: 'Yes, I have heard all about it, too, and I want you to take the address of this gentleman; go to him, get all the facts, and prepare an article upon it—in the old style, remember.' This was a phrase of his, used when he wished anything written in a peculiarly witty or sar-

castic vein. He then gave me the notes he held in his hand. I suggested that possibly it would be best to suppress names, as the parties stood high, and trouble might ensue. He angered at once, and replied: 'The papers don't keep my name out when I get into a difficulty; why should I suppress the names of these persons?'"

Previous to the publication of the article it appears (as given in evidence on the trial) that James Grant, brother of the person whom the article exposed and caricatured, while making preparations to bring back and reclaim his sister—who, it is not denied, had left Richmond and gone as far as Philadelphia, without the consent or knowledge of her parents—had sought a friend, a Mr. Stover, a clerk in a clothing store, and had besought him to see that the newspapers made no mention of the event in his family, his apprehensions having reference to *all* of them, and Stover replying that he thought he could prevent it in the case of the *Southern Opinion*. Two or three days, however, before the *Southern Opinion* of the date referred to was printed, mention was made in another Richmond paper of the disappearance of a female member of a family of some social pretensions; but no names were given.

Meanwhile to Mr. Stover's approaches, designed to suppress the narrative of the elopement as it had been prepared for the *Southern Opinion*, Mr. Pollard appears to have firmly asserted the truth of the article (once remarking as was testified on the trial, that if a poor girl had been the delinquent, a newspaper would not be asked to withhold her name, and that he would recognize no social distinctions in publishing what he believed to be true). Of the decisive interview of Mr. Stover and Mr. Polland, Mr. Hanna, who attended it, and who was a party to it, has given the following account: "The conversation again, as before, hinged on the possibility of suppressing the publication. The intermediator at last, rising with impatience, said, with emphasis: 'Mr. Pollard, is there no way by which this can be prevented? I am a friend of the family, am acting as such, and do assure you, upon the honor of a gentleman, that the reports concerning its member are false—utterly false.' Mr. Pollard, rising, walked the floor of his *sanctum*, then resumed his seat and replied: 'As for any pecuniary considerations that may be offered me' [there had been a proposition in a previous conversation of buying up the edition of the paper] 'that is purely a matter of business. I publish my paper to sell. If Mr. Grant, or you, as his representative,

wish to purchase this edition of my paper I will sell it to you; or, I will sell a half interest in my paper, or I will sell it entire; for I have wished for some time to form another newspaper association in New York city. But as for selling my principle, that I never will do; there is not money enough to buy me.' The gentleman remained silent, and Mr. Pollard resumed: 'Or, if I publish this article, this I am willing to do: I will open my columns to Mr. Grant, and I will print line for line and word for word whatever he may write in contradiction of the article.' The gentleman asked, 'Mr. Pollard, can I see the article you have prepared for publication?' Mr. Pollard turned to me and said: 'Have you any objection to Mr. Stover reading it?' I replied, 'Not in the least,' and passed the proof-sheet to him. He read it over carefully, and, concluding, remarked: 'Well, that is not so bad as I expected it would be; nevertheless, there is not one word of truth in the whole of it.' Mr. Pollard demurred: 'How is it, Mr. Stover, then, that all these stories are going about? I myself have made inquiries, and feel justified in making them public through my paper.'"

On the day of the publication of the article Mr. Pollard remained in his office purposely, as he said, to receive any one who might call with reference to it, or have any demands to make upon him. Three entire days passed; and yet there was no intimation that any of the Grant family would seek any reparation in any manner, or avail themselves of the columns of the paper as a medium of correction, as Mr. Pollard had offered it to them.

On the Tuesday following the publication—the 24th of November—Mr. Pollard pursued the usual route to the office of his paper, going from his home in the country, on the road where for three days he had gone to and fro, exposing his person and not dreaming of danger. A companion on the fatal ride to the city has given a minute and graphic account of its incidents. He says:

"After breakfast Mr. Pollard spent, as was his custom, half an hour among the workmen who were putting some improvements upon his house and grounds. He was happiest at home, and to meet him there socially was to encounter him in his best moods, with all the geniality of his nature in play. Oftentimes have I heard him say, as he stood looking towards Richmond, or walking his grounds: 'I wish I never had to go into that town; I could be happy here, were I free from the troubles of my paper.'

"At about a quarter to 9 o'clock the vehicle was announced as ready to

carry us into the city and the office of the *Opinion*. The presentiment of trouble yet strong on my mind, I said to Mr. Pollard: 'Suppose you do not go to town to-day. I can supply the printers. 'No,' he answered, 'I must go in; besides, I must see that man to-day.' If man hath each a good guardian angel to walk with him, protecting and defending from death that lurks unseen, and dangers that encompass mortals around, at that moment the good angel of H. Rives Pollard deserted him—turned away and resigned the victim to the fate that waited hidden before him. From that moment Death's seal was upon him. He had even then passed the boundary of life, and was entering the shadow of death, approaching the sunset of existence.

"That ride was not more eventful than many other rides we had taken together. Mr. Pollard sat on the front seat with Mr. Redford, the driver; I behind him. Of conversation, save casual remarks, there was none until the vehicle had passed into the city, on Main street. We passed the residence of Rev. Dr. Hoge, and I observed that there was crape on the door. 'Who is dead,' inquired Mr. Pollard. Not Dr. Hoge, I hope.' (He had been ill, but was then convalescent.) Mr. Redford said the party deceased was a female member of the family, which appeared to relieve greatly the sudden anxiety of Mr. Pollard. Among the few of those for whom he expressed admiration, he numbered Dr. Hoge, and his estimation of his personal character as a man and reputation as a minister was of the most exalted kind. He had preached the funeral sermon of the late John M. Daniel, editor of the Richmond *Examiner*, in 1865, and Mr. Pollard, seeming to recall this incident, said in tones more solemn than was his wont: 'I have always said that when I die—as I shall, probably, some day—I want Dr. Hoge to preach my funeral sermon. I think he is one of the best christians and most eloquent preachers that ever lived.' I had heard him express such sentiments before, and so made an affirmative answer to his remarks.

"On down Main street; past the Spotswood—we drew swiftly towards the spot where death lay in wait, watching for the coming of the victim.

"Sitting behind him, I noticed that Mr. Pollard bowed occasionally to persons on the street. Once after a salute he turned to me and said: 'There goes a man who I know hates me.'

"On we were driven—one of us to death. The assassin's eye, peering from the curtained window, is already fastened upon its mark, coming nigher and nigher, charmed within the circle of death. We alight—Mr. Pollard first; I after him.

"One eye of the garreted assassin is closing, the other glances along the charged barrel; his forefinger presses the deadly trigger. Providence separates us by a little time and space—a moment—a few feet. Another second, there is a flash, a crack sharp and sudden, a splash of buckshot against the brick wall, and H. Rives Pollard lies dead, stretched at my feet."

The body—and it was yet convulsively breathing—was lifted from the sidewalk by two policemen, carried into the office of the *Southern Opinion*, and laid on a mattrass. Eleven *buckshot* had entered the back; two of these passing diagonally downwards from the shoulder had penetrated the lungs and heart, and lodging under the skin on the left side of the chest were cut out. Three other of the shot had entered the right shoulder blade and lodged in the chest.

A crowd soon collected in the street, and inquiries were made for the murderer, who, it was evident, must have been concealed in some elevated position, as the body of the deceased had been pierced from above. A few minutes elapsed, and a shout proclaimed that the assassin had been secured. In a room in the third story of the high building on the corner of Main and Fourteenth streets, diagonally opposite the entrance of the *Southern Opinion* office, was found James Grant; in the corner of it a double-barrel gun, one barrel loaded, the other empty; and on the table a Colt's revolver and two Derringers, all loaded. One of the windows of the room was hoisted a few inches, a shoe-brush supporting it, the shade drawn down to the aperture, and there was an appearance of burnt powder on the sill. When the policeman, Robert Craddock, knocked at the door of the room, Grant called out, "Is that you *Bob?*" and again "it is all right." When the door was broken open, and the officer of the law was seen, the first words of the discovered murderer were, "I surrender. Will you protect me?"

He was carried down stairs into the street. At his appearance the crowd *cheered;* a number of persons calling out "Hurrah for Jimmy Grant!"—and others remarking "Grant has killed Pollard!" He was taken to the police headquarters, but he was not committed to jail, remaining at the office of the chief of police; two days thereafter he was released on bail by the Mayor of the city (a man by the name of Chahoon, from Massachusetts, recently appointed to that office); and it was not until the February term of the Hustings Court of Richmond that he was brought to trial.

ARGUMENT OF JNO. H. GILMER, ESQ.,

IN THE PROSECUTION OF JAMES GRANT.

COMMONWEALTH *vs.* JAMES GRANT. *In the Hustings Court of Richmond, Virginia.* BURNHAM, *Judge. February term, 1869. Indictment for the Murder of* HENRY RIVES POLLARD.

Mr. GILMER closed the case for the prosecution. He said:

MAY IT PLEASE THE COURT, AND YOU GENTLEMEN OF THE JURY:—Before commencing the argument which I propose to the jury in this important case, I desire to read to the jury the law which I cited during the argument of Judge Ould,* and which was assented to by him. It is important that, at the outset, the jury should distinctly comprehend the law which, as the settled policy of the country, should, and, I am sure, will guide and control each member in the formation of the verdict to be rendered by the jury.

I read as follows from the first volume of Wharton's American Criminal Law, section 985: "Under provocations as these (adultery and such like) it will appear by the cases last cited, that whether the blood has had time to cool or not, is a question for the court, and not for the jury. But it is for the jury to find what length of time elapsed between the provocation received and the act done."

This, gentlemen of the jury, is the sound, well-settled, catholic rule both of law and practice in America and England. It must be honestly enforced and rigidly followed in all criminal cases, if we are to be protected by law and shielded by integrity in the administration of criminal jurisprudence. In proportion as juries obey the law and are guided by the settled rules of practice, will they, always and everywhere, avoid the unpleasant results of themselves violating the very law which they are sworn to enforce. It is by law and under law, that you and each of you are now to ascertain and apply the evidence in this case. To discover and heed the facts of this case, as you understand and desire to apply the law, is to violate the sanctity of the oath administered to you. You have no power to make or unmake the law, by which your verdict in this case is to be formed and rendered. You are the exclusive judges of the facts and circumstances which preceded, accompanied and followed the homicide imputed to the

*Of counsel for the prisoner.

prisoner at the bar. But so long as you regard and are properly restrained by the oaths which you have taken, you dare not disregard the mandates or lightly sport with the majesty of the law. Discard from your consideration the letter and spirit of the law, and yield your judgment and consciences up, individually, to the suggestions of prejudice—the whim of fancy—or the higher impulses of sympathy—you at once enter that wide field of speculation and yield your minds to that unholy bias of passion, which led the unfortunate prisoner at the bar to the commission of the fatal act for which he now stands on his deliverance. Law, gentlemen, is the sheet-anchor of all that is dear or worth preserving. Under its ample folds are gathered in security, and preserved by authority, the property, honor, lives, and character of us all. In its stern integrity, fixed inviolibility, pervasive mandates, repose the silent power and ever-present shield which uphold and protect the social structure. Unloose it from its moorings—unsettle its principles—discard its teachings and deal irreverently with its mandates, and you at once reduce society to chaos, while you expose the honor of your sons and the virtue of your daughters to the brutal passions of all bad men. It comes to us this night, as it has existed, influenced and sustained our forefathers. It has the sanction of ages, and utters the tested wisdom of centuries. It speaks to you to-night from the great past and challenges your respectful consideration. Sport not with the law as it shall be expounded to you from the bench. Comprehend it aright and enforce it fairly and fearlessly.

Gentlemen, all of the learned, able and eloquent counsel for the defence have invoked your sympathies for the prisoner. Give them to him, he needs them. But in doing so, violate not your oath, I pray you. Stain not your own consciences with the moral taint of inadvertent perjury. No one in this court room, outside of his blood relatives and immediate friends, has a more sincere and gentle sympathy for the prisoner than myself. I have known him from his childhood up. But I have assumed a solemn duty which imposes obligations of a higher and more commanding import than mere personal sympathy. What I shall express to you—the sentiments and emotions which control me—what you feel—the motives by which each of you are influenced, at each and every stage of this solemn proceeding—will remain with us for our lives and impress our eternal existence. This is no fancy sketch. I hope that I realize, in all its solemnity, the importance, the responsibility and the weight of this trial; and I shall in each word I utter—each impulse of the heart—each and every emotion of the mind, strive to conduct this argument so that I may have nothing to regret, when, in eternity, I shall stand before my Creator, to account for the deeds done in the flesh.

Judge Ould, in his masterly conclusion for the defence, full of passion and beautifully persuasive, not only invoked your sympathies for the prisoner, but he asked you to "feel towards and treat him as you would your own son." Allow me, gentlemen, to recall you from the spell under which his touching appeal must have left you, and to remind you and each of

you, that you cannot "feel towards the prisoner or treat him as you would your own son." The law so far honors and respects those pure, deep, inextinguishable sources of love and affection, which nature has implanted in the human heart, that it will not allow a father, a son, a brother or any near relative to act a juryman on the trial of one thus connected. It is a beautiful and serious recognition, by the law, of the strong ties which unite and bind together blood relatives. Then you cannot "feel towards or treat the prisoner as you would your own son." The law forbids it—your oaths forbid it—the principles which regulate all judicial responsibility forbid it—the interests of society forbid it—the circumstances, incidents and important relations of this trial forbid it. There is a higher, more expansive and not less tender sympathy to which it is my duty to direct your attention. The learned gentleman has told you that the people are trying James Grant—and you are the people on this occasion, because you represent the people. Accept for the present this strange proposition of the learned gentleman, and to what conclusion does it bring you? The prisoner is but one of the people and are you to save him, if guilty, at the expense and imminent hazard of *all* the people? If James Grant has violated the law of the people, should he not be tried by that law, and not shielded by the passions, prejudices and sympathies of the people? What and who are the people—that, under any circumstances, on any occasion, they are entitled to claim protection for the deliberate, wilful, cowardly act of assassination? This is a harsh word, I utter it with pain. But I now, here, assure you, and through you the people, that if that unfortunate youth is guilty of the act imputed to him, he sits there, in your presence, with the fearful, deep, ineffaceable crime of cold-blooded, deliberate premeditated assassination resting upon him. Is he guilty as charged? Is he an assassin?

Before I proceed to consider the evidence, allow me to direct your attention to the singular position assumed by the learned counsel who have conducted the defence with such marked ability. They rest the defence on two points or propositions. First, that the prisoner did not shoot and kill the deceased. Secondly, if he did shoot and kill the deceased—as disclosed in the evidence—he did right and was justifiable in so doing. Yet more:—that if he had not have so shot and killed Henry Rives Pollard, he would have been a dishonored son of an honored father, and an unworthy brother of a lovely sister, whose virtue had been ruthlessly assailed and defamed by the deceased. Such are the two propositions which I have to consider.

Now gentlemen, pause for a moment, and consider these propositions as they are presented and now stand before you. There sits the prisoner, where and as he has been for nearly ten days, in silence—mute as the body of the deceased, who fell in the "twinkling of an eye," killed by buckshot fired from a double barrel gun, found in the possession and under the sole control of the prisoner; locked up in a third story room, where no eye could see him, no hand reach him, no weapon be fired at him, no danger

assail him. This silence—so terrible to the guilty—has been maintained, under circumstances which I shall presently consider with accurate minuteness, at all times, in all places, on all occasions—save one—even down to this moment; and yet, you are told, the act as done, the killing as proved, the death as deposed to, *should have been* the act and deed of the prisoner, and for which, if he did it, he should receive the plaudits of all men, and especially claim your approving verdict. Such is the "moral vantage ground" assumed by the defence. Not guilty of the act imputed; and yet, if not guilty, the prisoner merits and should receive the scorn, contempt and denunciation of all men. If he did not kill Henry Rives Pollard, when, where and as he was killed, James Grant should be, through all time, "a scoff, a jest, a by-word through the world." And he now denies the act—puts away the crown of glory, temporal and eternal, so elaborately woven for him by the learned counsel for the defence, and crawls to your feet with the cry of mercy on his lips—as not having done the deed. If he did it he was justified; and yet, he tells you he did not do it. If he did not do it, he was a disgraced man, a dishonored citizen, meriting the scorn and contempt of all honorable men; and yet, though present at the time and place of the murder, armed with a double barrel gun, two derringers, and a Colt's six-barrel pistol, locked up in a third story, with all the traces of guilt and criminality around him, the deed being accomplished, the victim of his deliberate act lying dead just below him, the plaudits of the approving crowd awaiting him; and yet, he is as silent as to the act—though "surrendering" to and claiming "protection" of the officers of the law. How true is it that "conscience doth make cowards of us all." What agony, what suspense, what fearful misgivings, pierced and wrung the soul of the prisoner at that moment? But I must pass to the consideration of the first proposition, as announced by the learned counsel for the defence.

In discussing the first proposition I shall consider it in all of its bearings and relations as entirely distinct from and independent of the second proposition. I will treat the prisoner and the deceased as strangers, if you please, as if there was no word of evidence to show, or even tend to show, that they had ever met or had a single word of difference. This is surely liberal enough. I thus state the proposition, to meet the broad, well defined lines which characterize the evidence as given in before you. I will misstate no facts, displace no circumstance, violently connect no link in the chain of circumstances or facts, incidents, conduct or deportment of the prisoner. He shall stand before you in the broad clear light of truth, as it was thrown around and over him—bound to each and every link of the chain of evidence, as it was drawn out in your presence. Let him stand or fall by it. The Commonwealth feels secure in the facts as proved.

On the 24th day of November, 1868, the deceased, with his friend, about half past nine A. M., alighted from his carriage, at the corner of Fourteenth and Main streets, on their way to the office and place of business of the deceased. He immediately proceeded up Fourteenth street towards

his office, and had advanced about thirty paces from Main street, being a few feet ahead of his friend, full of life, buoyant, with an elastic step—when suddenly the sound of a gun is heard, the splash of shot on the wall, and the deceased falls, and when reached utters but one feeble groan and is a corpse. All this occurred on a public thoroughfare—and in a few feet of Main street. He was seen to fall by a detective. Several public officers, and two detectives in a few minutes stand over his body. No immediate search is made for the person who fired the gun. In a few minutes detective Knox and officer Chalkley ascend the stairway which led to the room in the three-story building opposite the spot where the deceased fell. They ascend the steps and advance to the room in which the prisoner was soon found, tried each of the two doors which led to the room; both were locked. Not a word from within was uttered. All was silent. They return to the street without an effort to enter the room. In a few minutes afterwards the same officers reäscend the same stairway in company with detective Craddock and others. They advance to the first door leading to the room in which the prisoner was; it was locked and the key on the inside; not a word is proved to have been uttered; they proceed to another door, by a passage: As they approach it a voice is heard from within—"Is that you Bob—all right—you will have to break open the door—it is locked and I have not the key." These words were addressed to the detective Craddock. He immediately broke open the door and forced his way into the room; the prisoner was standing about the middle of the room, with a pistol in his hand and the other resting on a table. As Craddock approached the prisoner he exclaimed—"I surrender—will you protect me?" to which Craddock replied—"certainly I will."

On the table was a derringer pistol and a Colt's six shooter, each loaded; near the window opening on Fourteenth street, was a double barrel gun, one barrel loaded, the other empty. That window was so located, as abundantly proven by General Wise, that the deceased might easily and surely have been shot from it, where and as he was shot. The prisoner uttered not another word. He was immediately taken in custody. As he descended the steps and reached the street, the prisoner was cheered. He made no response, though he was called by name. As he passed on to the station-house, he remarked to a police officer—"I did not do it—nor do I know who did it." This language was repeated after he reached the station-house.

Recurring to the scene of the homicide, it is in proof by Doctor Cullen, that he was walking under the windows of that room, in which the prisoner was found, at the moment the gun was fired—and the sound or report came from immediately above him. He walked away, and was in a few steps met by some one running to the spot, exclaiming "Grant has shot Pollard." It was in full proof by General Wise, that the deceased could have been easily shot from the room in which the gun was found, or from the one immediately adjoining it, both rooms being those of H. P. Clinton. It was in proof, that between five and six o'clock on the

evening of the 23rd of November, the prisoner went to the place of business of the witness Clinton, and remarked he "would stay at his room that night;" that the witness handed him a key to the lumber-room, which adjoined the sleeping-room in which the prisoner was found; that neither Clinton, his room-mate, or servant were at the room that night; that Clinton visited his room the next morning between seven and eight o'clock, found the prisoner there standing before a glass, and partly dressed; that they took a drink of wine together and Clinton left locking the door after him; that no arms of any kind were seen in the room by Clinton; that the bed showed, as proved by Clarke, that but one person had slept in it, since it had been last made up; that the two derringers in the room had been purchased by the prisoner, of the witness Sutherland, on the 17th or 18th of November, and were in the presence of the prisoner loaded by the witness; that Clinton kept no weapons and had never seen any arms in his room; that Clinton's rooms were on the third story of the building on the corner of Main and Fourteenth streets and exactly opposite the building in which the office or place of business of the deceased was; that the deceased usually went to his place of business between nine and ten every morning; that the desk in the office of the deceased, at which he usually sat, was opposite and nearly on a level with the window at which the gun was found; that Craddock was induced to go to the rooms of Clinton by the direction of the shot, as they entered the body of the deceased; that the line and direction of the shot on the brick wall, where the deceased fell, was such as they might have come from either of the windows in the room of Clinton, and penetrated and entered the body of the deceased, as they did. Doctor Brock found that the shot which entered the body of the deceased were in such a line and from such a direction as to establish two facts—first, that they were discharged from an elevated position, secondly, from the house on the opposite side of Fourteenth street, where the deceased fell.

To all this, the only countervailing facts in proof, were that the witness Hardy did not hear the expression of the prisoner, referred to by Craddock—"I surrender"; that there were several ways of egress from Clinton's rooms, besides the one leading to and from Fourteenth street. No other material fact as stated was contradicted.

Such are the material and leading facts in proof. Bear it in mind, if you please, gentlemen, that I am considering the first proposition, disconnected altogether from the second. Let us now consider and weigh them, in all of their relations, as links of evidence. Considered separately and independently, they bring home to the prisoner, both as to time, place and circumstances, a fearful and most significant array of facts, both physical and psychological, which to say the least call for explanation. Has any been given? Not one word of explanation has or can be given on the hypothesis of the innocence of the prisoner. No explanation is attempted; the prisoner is even at this moment silent. Are you thus to be duped and sported with? Why was the prisoner in that

room, thus surrounded by the instruments of death, and not explain, when he knew the deceased lay a bleeding corpse, hard by? Why no explanation in that room, when thus suddenly broken in upon? Why silent when that thoughtless and unnatural cheer was given—as he passed by the fatal spot, red with the gore of his victim? Why immediately afterwards deny the act and all knowledge of it? Why now silent—on this fearful issue of life and death? Are you to speculate, and doubt, and rest on conjecture, as to why he was thus found, when he refuses all explanation, and when, in the absence of explanation, his presence must exclude all rational doubt as to his guilt?

These facts and circumstances taken together, grouped and weighed as a whole, bring home to the prisoner a guilty knowledge, which must lead your minds and consciences directly and necessarily to the inevitable conclusion of his guilt. No one at all acquainted with the ordinary workings of the heart and mind, can entertain a rational, well-founded doubt, that each part taken separately as proved, indicates the prisoner as the only person who could have committed the deed; connected, weighed and construed as a whole, they point to the prisoner with a direct and overpowering significance. Silent in the room, where he was first discovered—encased in arms—with every facility for committing the act—one barrel of the gun empty—the dead body of a man, just shot, lying opposite the window at which the gun was found! Silent when cheered, as he descended from that room, and passed the dead body, just taken to the office of the deceased! His silence broken a few moments afterwards, as he is walked to the station house—a prisoner, in custody of the officers of the law; and then without suggestion or enquiry, the significant words escape his lips—"I did not do it, nor do I know who did it." Why those words—why that denial? They were voluntary. Could the "still small voice of conscience" keep still no longer? No one, even in ordinary conversation ever speaks without some motive. But under the circumstances which then surrounded the prisoner, his words were of fearful import, as then uttered. Up to that moment he had preserved silence. Why were not those words uttered when he was first discovered, locked up, secreted, hidden away, surrounded by the implements of death, with one barrel of the gun discharged? That was the critical moment at which, if innocent, the prisoner would have broken silence. Why did he not then and there utter those words? Why did he pass by, in silent approval of that fatal, cruel, unfortunate cheer? These circumstances taken together, and unexplained, must awaken in your minds, a train of reflection, which leads to the conviction that no one but the prisoner could have committed the act which resulted in the death of the deceased.

Here the Court adjourned to eleven o'clock Saturday morning—at the request of Mr. Gilmer.

Mr. Gilmer resumed his argument at eleven o'clock.

MAY IT PLEASE YOUR HONOR, AND YOU GENTLEMEN OF THE JURY:—I return to you gentlemen, my cordial acknowledgements for your courtesy

and kindness in assenting to an adjournment last night, asked for by me in consequence of the diseased condition of my throat. I hope the delay will be beneficial to us all. We have had a quiet night to reflect on the important and responsible duties which are devolved upon us. For myself, I have spent many anxious moments of solicitous reflection since we parted last night. I have reflected with no ordinary solicitude upon the responsibilities which now rest upon me; responsibilities which necessarily spring from the singular developments of this trial—reaching to the public, to the whole country, and even to our posterity; responsibilities which will follow me through all time, and which will attend me in eternity. But, gentlemen, the responsibilities which thus surround me, are attached to each and all of you, with a far more delicate and weighty import. My errors you can and should correct. Any error or oversight which you may commit, will affect your children's grand-children, and be visited with fearful significance on this city and State. This is the most important criminal trial that has ever occurred in Virginia. It is the first instance in which a Virginia jury has been called on to justify a cold-blooded, premeditated assassination—with or without provocation. Assassination! What a crime! What an outrage upon the manhood of Virginians! What a stigma upon the American character! What a blot, stain, and reproach upon the nature of man.

I now resume the line of argument. At the point reached last night, when we parted, I was discussing the first point or proposition, and had traced the main features of the evidence of the unusual, cruel and premeditated manner in which the deceased came to his death. I had mentioned the manner and time, in which the prisoner procured the key to Clinton's room—on the evening of the 23d of November; the fact that no one ever saw or heard of the prisoner after that occurrence until Clinton found him—standing before the glass—only partly dressed, between seven and eight o'clock on the morning of the 24th November, in Clinton's bedroom—the same room in which he was found locked up just after the homicide; the fact that neither Clinton, his room-mate or his servant, who attended the rooms, had been to that room during the night of the 23d, and no one but Clinton on the morning of the 24th—and then only to take a glass of wine with the prisoner; the fact that but one person had slept in the bed in the room that night; the fact that when Chalkley and Knox, went to the doors of the rooms, each was locked and no response made from within; the fact that those officers descended to the street, to return with the detective Craddock—who took the same rounds and was saluted at the last door—"Is that you Bob? You will have to break the door open, it is locked, I have not the key"; the fact that when the door was forced and Craddock and others entered, the prisoner with pistol in hand exclaimed—"I surrender! will you protect me?"; the fact of the presence of the gun and pistol; the fact of the cheer from the excited crowd, as the prisoner reached the street, in custody, and no response; the fact of the denial—"I did not do it, nor do I know who did do it;" the fact that the place where the act was done was the surest, safest and least exposed, of all

others, at which such an act, as was committed, might have been perpetrated, in perfect safety to the actor and without molestation or danger;—and I was proceeding to group and analyze these inculpatory facts and circumstances, when I was so kindly indulged with an adjournment. I will now proceed with the regular discussion of the first proposition.

Before doing so, however, it may be well, just here, to consider the rules of evidence as presented by the learned counsel for the prisoner. In the main they were well stated and accurately cited. I must be pardoned, however, for here entering my entire dissent to the mode and manner of their application to the case at bar. It is true gentlemen, that you must be satisfied beyond a reasonable or rational doubt, of the guilt of the prisoner, as charged, before you can bring in a verdict of guilty. But what is a reasonable or rational doubt? It is such a doubt as naturally springs from the evidence in the cause, and is not borrowed or derived from outside impressions—a doubt which arises in the mind, soberly in search of the truth of the case, and which meets the deliberate sanction of the informed judgment, under the approval of an enlightened conscience. This is the kind of doubt to which, when it exists, the prisoner is entitled. The law, reason, justice, the demands of society do not authorize you to hunt after doubts—to seek to create them by wild speculations, or discover them in fancied opposing theories. The juryman who hunts after doubts, dimly shadowed forth in a timid heart and wavering mind, leaves out of view the solid facts of the case and lightly casts his oath behind him. He who, in such a case as this, reads duty in the mirror of public sentiment, or shapes his doubts to meet the wishes of the people, is unworthy of the high trust reposed in him—by the people.

You occupy a charmed and sacred circle, from which all popular prejudice, all public feeling, all outside manifestations are sedulously excluded. For myself, standing as I do here, before you to-day on this occasion, I shun all popular manifestations, and lift my mind, heart and judgment high above them, that I may rise to the full level of the case before us, in all its solemn responsibilities, as becomes me. How important to society—to law and order—to the grave issues which are so soon to be submitted to you—is your present position! Will you not meet and discharge the duties of the hour? Will you not realize that the honor and good name of Virginia—the safety of generations unborn—the sacred ties which bind man to man—the solemn duties which link, through time and eternity, us all to Him who created us—the lives and security of all—rest, in suspense, awaiting your verdict? Will you not on this solemn occasion, remember that it is not only the prisoner and the deceased, who are before you—but that in this case the eyes of the civilized world are upon you? How then gentlemen, can you idly speculate or vaguely conjecture? How dare you, in the face of the whole country—in the presence chamber, as it were, of your eternal Judge—deal in visions, and seek beyond the legitimate evidence in the cause, to ascertain whether it is not in the range of possibility, that some one else, other than the accused, might or could have killed the deceased?

Gentlemen, pause—pause I pray you; think and reason, weigh and discriminate, as I now take you along with me to the dead body of Henry Rives Pollard—as it lay, a lifeless corpse, shot down without a moment's warning, from behind and above; the base assassin hid away, locked up in a third story, encased in arms, and trembling in dearly purchased security. Pause, deliberate and doubt not, as we ascend that stairway and discover, pale and silent, the prisoner. Pause and doubt not, as you enter that room, view those fearful instruments of death, watch the trembling limbs and pallid lips of James Grant as he exclaims—"I surrender; protect me"? Pause and doubt not, as you weigh in the scales of reason, that fearful exclamation as it involuntarily leaped from his agonized heart—under the overpowering influence of that "still small voice" subduing his soul, and accusing him, before God and man. Pause and doubt not, as you descend those steps along with the accused, and as you reach the street, hear that unearthly, demoniac, inhuman cheer for Grant, the murderer of Pollard. Pause and doubt not, as you watch his countenance, measure his steps and listen to the palpitations of the prisoner's heart, as he receives the plaudits given him—in silence, dead as the body of the murdered man, as he passes along and away from that crowd; why did he not then and there deny the deed? Why was he then and there silent? The people applauded him, by name, for the deed. Why was he then silent? The spirit of a fellow being had just ascended, with the smoke from the gun which had just been fired, and which had been found locked up in the same room with him; the echo of that explosion had scarcely died away, when a sound more terrible, was heard, from human voices—in loud applause of the murderous deed, and the prisoner was, by the crowd, recognized as the slayer. Why was he silent? If not guilty, then and there was the time and place, at which a clear conscience would have impelled him, in the spirit of true manhood, to cry aloud: "I did not do it—nor do I know who did it!" His silence under such circumstances was a tacit admission of the act thus recognized and applauded. Pause and doubt not as you accompany the prisoner along the street on his way to the station-house, and hear him say: "I did not do it, nor do I know who did it." Why did he then and there use those words? It was the first denial. Why did he not instantly, when he was discovered in the room, deny the act? Why did he not immediately explain why it was he was thus locked up and thus surrounded? Why did he not use those words when he was cheered? Why, when he did deny it, did he not explain his position, his occupation of that room, the presence of those fire-arms? Why was he then silent on the most important and vital points? Why has he not explained these pregnant facts before you, during this trial? Is not his continued and studied silence up to this moment, a clear admission, on his part, of a guilty knowledge, a guilty occupation of that room and a guilty possession of those fire-arms? Gentlemen, pause and doubt not as you grasp and group all these facts, the one following the other in a regular sequence, each resting upon and sustaining the other, and all forming a united, well-joined chain of facts and circumstances, from beginning to end, here now before you

linking the mind and will, uniting the act and deed of the prisoner with the dead body of the deceased—as it was seen on the 24th day of November, 1868, on Fourteenth street!

What would my friend Mr. Atkinson, of the jury, think, say and do, if, as he was riding along the highway to his home, he saw two men standing or walking together, one holding a gun in his hand, the other unarmed; as he turned his head away, he heard the sound of a gun fired off; approaching the spot, he saw a man lying dead, weltering in his blood and the two men escaping together; not waiting, as was done in the case at bar, to stand over the dead body, he quickly pursued the fleeing men, and secured both. Immediately on arrest, one explained—stating he was a stranger to the man who held and fired the gun—had that moment overtaken him, and knew nothing of his intention to slay the deceased; while the other preserved a studied silence, made no explanation at the time of arrest, but afterwards denied he fired the gun. On examining the gun it was found to be the property of the silent man—just as were the two pistols found to be the property of the prisoner at the bar. Would you not say that the silence of the one inculpated him, and the immediate and truthful explanation of the other exculpated him? Is not the possession of recently stolen property, unexplained, criminative evidence of the theft? So here, the failure of the prisoner to explain his possession and custody of those arms—his occupation of that room—on that occasion—his immediate proximity to the place where the deed was committed, with all the necessary facilities for committing the act, is affirmative proof of guilt, to every intent and purpose, according to every well settled rule of law and evidence.

What would my friend Mr. Todd, of the jury say, if as passing along the highway, he saw a man lying in the agonies of death—blood oozing from a mortal wound, and another man standing over him with a bloody knife in his hand, and another rapidly running away from the scene of death. The one standing over the dying man, at once explains his position—and states that he found the man prostrate, another standing over him and about to search his pockets, but on his approach the man thus engaged, instantly ran away, leaves the knife in the body of the prostrate man; hoping to relieve him he drew out the knife, and thus occupied, failed to follow the man who fled on his approach. The fleeing man is pursued, caught and placed under arrest; and when thus arrested, he is silent and non-responsive. Which of those men would he designate as the guilty man?

Apply these plain illustrations to this case. Who was ever seen in or about those rooms but the prisoner? Why was he there? Why were those fire-arms there? Who fired that gun? Who was the rightful owner of those two pistols, one of which was held in the hand of the prisoner? Why were they there? Why were they proved to be the property of the prisoner, along with the gun and Colt's six shooter? He who took the two derringers to that room must have taken along with them the gun and revolver. If not the prisoner's, when, for what purpose, and to whom did he

part with his pistols? Until these questions are satisfactorily answered by the prisoner, who can doubt that he was the sole occupant of that room, and while thus occupying it, that he discharged one barrel of that gun, and was the only person who could have shot the deceased? It is mere idle surmise to conjecture, that from the statement of the witness for the defence, Mr. Tyler, some one else might have perpetrated the act, and fled out of the back way, leaving the prisoner the sole occupant of the room from which the gun was fired. Your duties, gentlemen, are not to weigh possibilities, much less to hunt up possibilities. You are to deal with stern realities. These realities, as developed in this case, establish beyond a reasonable doubt, that as the case now stands before you on the evidence as received by you, the position, presence, and conduct of the prisoner, fix upon him the act with which he stands charged. No other hypothesis is consistent with the evidence; every other hypothesis is inconsistent with the evidence. The conclusion of guilt flows as a necessary result from the facts and circumstances as proved, beyond all reasonable doubt. Each and every material fact and circumstance, inculpatory in its tendency, has been fully established by plenary and affirmative proof. Not a single material exculpatory fact or pregnant circumstance has been established. To deny the legal sequence is to disallow the plenary facts, which cannot be done in the absence of well sustained contradictory evidence. No such evidence is before you. How then can you entertain a reasonable, well founded doubt? To acquit in the absence of such doubt, is to sport with your oaths—to barter conscience for the idle discharge of the most solemn duties—to throw out of your deliberations, the jewels of truth and justice, that you may shield the guilty. Will you do it?

I now proceed to the consideration of the second branch or proposition of the defence; which is, if the prisoner did actually kill the deceased—as it is fully in proof he was killed—he was justified in so doing. I approach this branch of the defence under a thorough appreciation of its great delicacy, and not unmindful of the weighty responsibilities which attend its discussion. I shall meet the issue of provocation, as it has been presented by the learned counsel for the defence, in the same spirit which has conducted me through the consideration and discussion of the first branch of the defence.

In my opinion, the introduction of the alleged libel by the defence, has, in every way, fortified and made sure the legitimate deductions arrived at in my discussion of the first proposition. If any reasonable doubt could have rested upon the mind of a single juror, under the first proposition, it must now be removed. If the prisoner had a motive to kill the deceased, who can doubt that he did kill him? In my view of the law and evidence there could be no doubt of his guilt—even in the absence of proof of a motive. The introduction of the libel by the defence establishes a motive; proves an abiding, continuing provocation, and thus satisfactorily explains the precedent, accompanying and subsequent acts of the prisoner. Every antecedent declaration and act of the prisoner is made plain. We now fully comprehend his meaning when, on reading the libel on the 23d of

November, he told his friend, Mr. Stover, that he would hold the proprietor and editor of the *Southern Opinion* responsible for the publication. We can now understand why he purchased more pistols, as is proved. We can now comprehend his motives and measure his acts, when, on the evening of the 23rd of November, he procured the key of Clinton, which secured the entrance to and possession of the room, in which he was discovered, locked up, immediately after the gun was fired; why he staid there alone, meditating over the terrible act so immediately in prospect; why he had those fire-arms there; why he used them, as they were used; why he fired the gun at the deceased; why he slept on his wrath and nursed his malice; why he laid in wait, like the panther, watching his opportunity to slay his enemy, as he passed by on his usual walk to his office; why he secreted himself—excluded his person and concealed his weapons; why he was left the sole occupant of that room, in which he spent the night, meditating upon and prepared for the cold-blooded, deliberate, studied murder of the deceased. All these facts are fully explained. He had resolved to kill the deceased, and to avoid all possible danger to himself. The death of the deceased being resolved on—he prepared for it, and laid his plans to do the act as it was done. But, gentlemen, allow me to assure you that no law known to the human mind or heart—no rule of social duty—no love of virtue—no domestic tie—no principle of honor or suggestion of true manhood can, to my mind, in the eye of the law, or under the ordinary feelings of men, justify, excuse or modify the act as it was committed. It stands out in bold relief, in every feature, no matter what the provocation—as a deliberate and inexcusable act of premeditated assassination. No law, human or divine, allows or excuses such an act. No authority has or can be adduced to sanction the deliberate taking of human life for a libel, no matter how false, how atrocious, how vile. There must be some limit to, some restraining power over human passions. The law must prevail, or every interest and right, duty and obligation, will be kept insecure and unguarded. The justification, as alleged and proved, is not sufficient—is not warranted. The manner in which it is relied on, is but an aggravation —bold as it is daring—of the offence as charged against the prisoner. If he denies the act, why was that libel introduced? If he is not guilty of the act as imputed, and he says he is not, why does he produce that libel? It should have been kept out of the case. The Commonwealth is not responsible for its production. The prisoner and his learned counsel have produced it with melodramatic effect before you, gentlemen, and for what purpose it is not, it seems to me, very difficult to ascertain. I fear it has been produced for the purpose of exciting feelings of resentment towards the deceased. The mode and manner of his death was so unusual—so violent—so secret—so unlike anything which has ever occurred in Virginia, that it was deemed necessary, in order to overcome its damaging effects, to assail the deceased in every possible way and by every available means, not only to prove the libel, but, if possible, to blunder upon the charge of hush-money and black-mail. In plain words, to blast the reputation and stain the memory of the dead as the only means of surely screening the

guilt of the living. To stain the character of Henry Rives Pollard, that his murder might be justified, and thus avoid the ignominious death of James Grant! Be it so. The libel is before you, gentlemen, and the learned counsel for the defence have, in the most unmeasured terms, denounced the character and deeds of the deceased. I shall, in my poor way, endeavor to meet both branches of this part of the defence.

First, as to libel. I am not here to justify or excuse it. I have more than once during this protracted trial had occasion to assure you, gentlemen, that no provocation—no taunts—no rounded periods and expletive invectives from the eloquent counsel for the defence, could, at any time, in any way, or to the least extent, induce me, so far to forget myself or my duties, as to be betrayed into the utterance of a single harsh or disrespectful expression towards or against the sister of the accused, or, in any manner, or for any purpose, to justify, or seek to justify, the publication of the libel. I have never read it. I have no taste for such productions. So far as this prosecution is concerned, you are at liberty to consider it utterly untrue. Regard the sister of the accused, who was the subject of the libel as worthy of all, and more than all, that the learned counsel for the defence have so eloquently and touchingly said of her. Accept her as the model of innocence—the personification of beauty—the pride of her parents—an ornament to the circle in which she was accustomed to move—the paragon of female perfection! I would in nothing detract from her real or supposed worth as a lady—her virtue as a daughter, worthy of her parents—her pure and tender affection as a sister. Sooner would I, here, now in your presence, submit to the amputation of my right-arm by a dull broad-axe, than utter one word, which, as to Miss Grant—could send another pang of sorrow to the stricken hearts of that distressed family, or tinge her cheeks with the faintest glow of displeasure. Woman, in her purity, I respect, admire and honor; in her misfortunes, I sympathise with her; in her fall, I contemplate—in silence. Throw around that young lady the mantle of a lofty chivalry and screen her with your manly sympathies. I leave her out of this case, into which she has been so unfortunately brought by her brother.

The truth or falsity of the libel has nothing to do with your duties. Another or higher proposition awaits your careful consideration: that is, did the deceased *believe* and have reasonable cause to believe that what he published was true. If he did, all that has been so harshly said about him, should have been left unsaid. Mr. Stover, the friend and representative of the family, and an impartial and truthful witness for the defence, told you that in all his interviews with the deceased about the suppression of the libel, Mr. Pollard reiterated to him the assurance, that he believed, and had good reason to believe the truth of the statements made in the publication; that he refused to withdraw it; that "no pecuniary consideration could induce him to do so;" that the family of the young lady was rich and influential, and moved in the higher circles of society; that he could perceive no propriety in not publishing as to them, when he made publications as to less influential persons. This was indeed a noble senti-

ment, bespeaking true manhood—a brave heart and lofty independence of character. It should call forth commendation and not such denunciations as you have heard. Mr. Stover stated, when he was interceding with the deceased, to induce him not to make the publication, that the entire article, which had been shown him was untrue, except the first and last statements—"the indiscreet conduct of the young lady and the distress of her family." Here then was the admission of the truth of a portion of the publication, by Mr. Stover to Mr. Pollard. Yea more, Mr. Stover stated to you, that on Monday, the 16th of November, the prisoner left for Philadelphia for his sister, and before leaving charged him to see that none of the Richmond papers published anything about the occurrence; that they had reason to apprehend that the subject might get into all the papers; it was in proof that the matter, without names, had been alluded to in one of the Richmond papers, the Wednesday before the publication in the *Southern Opinion;* all these pregnant facts are in full proof before you. And yet you have been assured by the learned and eloquent counsel for the defence, that the deceased published, or proposed to publish, the libel as a means of procuring "hush money;" that the whole proceeding was but a species of artistic blackmailing. The witness, Stover, told you that the deceased repelled the idea of "pecuniary consideration"—but said he published his paper "to sell;" that he proposed to sell all or a part of his paper to Mr. Grant, or any of his family or friends—the price of the paper or part so sold to be arrived at and agreed on by the appraisement of three disinterested persons. This last important fact, which throws a distinct and clear light on all that had previously occurred, was entirely overlooked by the learned counsel for the defence, in their zeal to denounce the deceased; but it should not be overlooked by you gentlemen of the jury. It speaks out in a voice of truth, and is a complete refutation of the severe censures so bitterly heaped upon the deceased. Rob not the dead of their rights. Character, after death is worth, to those who survive, more than wealth.

From these facts and circumstances, the most studied philippics and anathemas have been bestowed upon the deceased by the eloquent counsel for the defence. No expression was too severe; no epithet was too denunciatory; no comparison was too odious. The genius, learning, fancy and solid reflections of the learned counsel for the defence were exhausted to find language and comparisons dark and gloomy enough to picture before you the deformities in the editorial life and deeds of the deceased. My learned friend, Judge Ould, in one of his many beautiful flights of fancy, drew a picture of the newspaper press of the country, and characterised it as licentious in the extreme, as unendurable as it was domineering; riding rough-shod over all men and all things; striking down individual character and outraging propriety; darkening the moral atmosphere with the black cloud of calumny, and prostrating all that was good and pure, lovely and beautiful beneath its powers; and after endowing the press with the full powers and imparting to it the blighting influence of Jupiter, he, in a yet wilder flight, sustained only by the exuberance of imagination, represented the deceased as "the Tyrant of the Press," who should have been killed

off, to teach this literary autocracy a proper degree of moderation and circumspection. I have not the power to follow him in the wide range and extended field—through which he passed—on the soaring wings of unchecked fancy. His denunciations were too bitter; his pictures too dark; his tropes too brilliant for my feeble powers of description. It was pleasant to follow him, but it is impossible for me to emulate him in his bold flights and masterly eloquence. As I sat, however, in silent admiration of his intellectual effort, a scene in which he was the most conspicuous actor, which occurred many years since, in better times and happier days—in Washington city—come back to my recollection. Does my learned friend remember the trial of Daniel Sickles for the murder of P. B. Key? Has he forgotten the masterly effort which he, the representative of the government, made on that occasion? The same law prevails now, which he then so well expounded. He then stood where I now stand in relation to the prosecution. What a change "has come over the spirit of his dream!"

Such was the picture drawn of the deceased. I ask you was it justified by the evidence before you? What act of the deceased was before you—in evidence—which could authorize or justify what was said? That the deceased had faults, no one will deny. Who is without them? That he was brave and resolute, no one who knew him will question. That he held himself always and every where personally responsible for his words, written or spoken, the facts developed in this trial abundantly establish. That he was above the commission of a secret or cowardly act, towards a known or suspected enemy is in proof. He exposed to the criticisms of his pen—when he deemed it a part of his editorial duty—alike the rich and influential, and the poor and humble, as has been affirmatively proved. Are these traits of character which authorize and license any one or all men who felt aggrieved, to shoot him down from behind and above, secreted in a third story, locked up and surrounded by a battery of arms? Gentlemen, one thing I will say of the deceased:—with all his faults and imperfections, he was brave, true to the instincts of manhood, and utterly incapable of the crime of assassination. High and proudly above that crime—the darkest in the calendar of felonies—Henry Rives Pollard was elevated; and though he fell by the assassin's hand, his memory can never be disfigured with the taint of having darkened and stained the hitherto proud escutcheon of Virginia and Virginians with the terrible plot of an assassin's deed. This much I have deemed it a sacred duty, in the position I occupy, to say of the deceased. He sleeps in death—unmolested by all that has occurred or may occur here. One sentence as to the press. What would it be worth, among freemen, if presided over by cowards and regulated by cravens?

And now, gentlemen, allow me briefly to recall to your recollection some of the positions taken by the learned counsel for the defence, both as to law, facts and morals. You stand upon a high eminence. The eyes of all thoughtful men, everywhere, rest upon you. The lessons of the past, the wisdom of ages, as embodied in the law, and much of the welfare of every citizen, await your verdict in this case. All of the counsel for the priso-

ner assumed the distinct position, as before stated, that if the prisoner did kill the deceased he did perfectly right in so doing, for the provocation was too great, too galling for human nature to endure. Who could stand it, they exclaim. That provocation was the libel. Col. Johnson told you there was a law—the law of nature—which should in such a case as this influence you above the cold, icy maxims of the law as passed by the legislature; that the law of the human heart was stronger than the laws of the land. These laws—the law of nature and the law of the heart—should control you, and not the law of the legislature! What if the prisoner did "lay in wait"? If he killed the deceased, he did it as a sacred duty to society. No man could stand the provocation given in that libel. There could be no cooling time, exclaim Col. Johnson and Judge Ould. The insult was too great. It pierced the heart and entered the soul, there to fester and rankle, corrode and eat away the very existence of the aggrieved person, until the insult was redressed by the death of the man who had thus outraged every propriety and deadened every impulse but that of revenge. And yet you were told by those learned gentlemen that James Grant the recipient of this provocation, did not kill Henry Rives Pollard! Who, say they, could live under such an affront and wipe it out, by killing the author of the libel? and yet there sits James Grant, protesting that he "did not do it, nor does he know who did it." How is this? Is he such a craven as not to obey those high and holy impulses, invoked by his counsel in his behalf? If it was a duty to society, that he should have killed the deceased—why did he not do it, when he was there—at the killing—and as far as the evidence shows, was the only person in that room? If the voice of nature as it echoed forth the fearful cry for vengeance, in his heart, impelled him to avenge the outraged character of his sister, by the death of the deceased, why, when on the spot, present at the killing, did he not do it? And yet, say his counsel, you have no legal proof that he did do the deed—perform and execute "the duty to society!" What manner of man is the accused? Is he dead to those impulses so often invoked by his counsel? Has he no manhood—no regard for the character of his sister—no power to lash himself into a fury of mind and tempest of rage—under a provocation so terrible, as his counsel describes it, that there could be "no cooling time?" Insulted beyond endurance—to an extent that no man could endure; and yet he procured the key to the room from which the deceased was shot on the evening before the assassination, and so far as the evidence shows, slept in that room alone—was seen an hour and a half before the deceased was shot, in the room, and found there locked up, in twenty minutes after the deceased was shot—and yet he is so lost to the cries of nature—so heedless of the "laws of the heart" as not to discharge "a sacred duty, necessary to the preservation of society," by killing the deceased! I again ask, what manner of man is James Grant, as pictured by his counsel? Is he or is he not guilty as charged in the indictment? If not guilty, then all the anathemas hurled at the character of the deceased by Col. Johnson and Judge Ould are but faint echoes of the degradation and social worthlessness of the prisoner. The English language

does not furnish epithets strong enough to characterize the conduct, bearing and deportment of the prisoner if he did not kill Henry Rives Pollard, according to the theory of his counsels; and yet they assure you he did not kill him, and assert that there is not legal evidence to authorize you to say that he killed him! Thus stands the law, the facts and the law of nature as expounded by the learned counsel for the defence. Is this law sound? Are these facts consistent with their hypothesis? Is their law of nature consistent with the position in which they place their client? Consider these conflicting propositions. Analyze these clashing facts. Construe this, their law of nature, and where do they place James Grant? If not guilty, then let all men despise and hoot at him as he passes along the rugged path of life, say his counsel; if guilty, I tell you, convict him, punish him under the law of the land as his crime deserves. Listen not to the plaintive cries for mercy. Hearken not to the earnest call for your sympathies. What sympathy had he, as he "laid in wait," with a heart as cold and icy as his purposes were deadly and blood-thirsty! What sympathy had he, when he aimed that gun and pulled the trigger which caused the instant death of the deceased! Sympathy? What is sympathy? It springs from a pure and generous impulse of the heart, to be bestowed on a meritorious object. Can you sympathize with the assassin? If you can, there sits an object worthy of your deepest sympathies. But, gentlemen, *can* you sympathize with the assassin? If not, then turn a deaf ear to all cries for sympathy. Elevate your thoughts and fortify your minds, and seek on this occasion to meet and sustain the demands of the law as it shall be expounded to you by the Court. You have heard read in your presence the instructions which I asked his Honor to give you. Whether they are law or not the court will inform you in its charge. I believe them to be sound law.

And now, gentlemen, I am about to commit to your keeping the duties which the law imposes on you. I am sure you will discharge them without fear, favor or affection; that you will not lightly cast aside the teachings of the great, pure, independent and fearless men, who, in the past made Virginia what she was. Immortal spirits of the great dead, hover around and inspire this jury with the wisdom, virtue, integrity and indomitable spirit which animated and sustained you when the State of Virginia was brought into existence—amid the trials and throes of a fearful revolution! Guard the honor, preserve the manhood, rescue the personal character of every Virginian from even the implied imputation of countenancing, encouraging, sustaining, honoring the assassin! Thou, who created and will judge all men—Supreme Ruler of the universe, inspire us all to rise above and reach beyond the low instincts which animate the assassin! God of nature, who is the creator of the human heart, enable me, surrounded by embarrassments, as I am, to touch the hearts and subdue the prejudices of this jury, if any exist—remove all undue and improper sympathies, and leave them imbued with the spirit of truth, fortified by a high sense of justice and freed from improper doubts, and fully equal to the important duties which, under the law, I now leave in their charge!

CHARGE OF JUDGE BURNHAM TO THE JURY.

After an intermission of about half an hour Judge BURNHAM gave the following instructions to the jury:

GENTLEMEN OF THE JURY,—We feel it is a matter of sincere felicitation that so far has progressed the investigation in this case. The solemn duties of court and jury are about to specially commence; and for *our* part, however delicate and even painful they may be, we shall endeavor not to shrink from their performance, in all their length and breadth, in nowise avoiding or neglecting any portion thereof, as we are accountable to the people of this Commonwealth and to the Supreme Ruler of human destiny. We believe that you *also* will come to the consideration of the evidence with a just appreciation of your duty, and that, laying aside from your minds everything but the evidence, you will give it, under the *law* of Virginia, and under your solemn oaths, careful deliberation, and from it draw a just conclusion and verdict. We deem it due the distinguished gentlemen who are counsel for the defendant that we should set forth the causes which move us to respond to the request of the Commonwealth's attorney for instructions to your body binding upon you as the law of the cause.

The functions and duties of the parties concerned in the trial of a cause are as various as the parties themselves. The duty of the attorney for the Commonwealth is to carefully present indictment of the facts to the grand jury, and they thereupon to say upon their oaths whether the presentment be or not "*a true bill*"; and then, it having come into this court, to present the evidence to you and his view thereof—the attorneys of the defendant presenting all the facts and law which make for the defence of their client. Your body is charged with the reception of, and truly estimating the sworn evidence in, the cause, deducing therefrom "a true deliverance between the Commonwealth and the prisoner at the bar;" and our duty is to decide questions which arise *inter alia*, and to inform you of the rules of law which must control your action. Sitting as we (like yourselves) do, without the range of the excitements attending the trial, its interests and passions, we are charged with the correct expounding of the law and its just application to the evidence, not for the Commonwealth, or for the defendant, but as it truly is *between* them. As it is given to you by us are you bound to receive it. If we shall *err*, the Constitution and the law provide a superior tribunal to correct and direct us; otherwise this bench would be but a moderator of a public meeting, the preserver of the public peace between the contestants of the forensic conflict—a position and duties so mean as to be spit upon in disgust by one fit to occupy the place or perform the duties attached to it. This is not new or novel, but is as firmly established in the just administration of the law as the law itself. Your duty is to try by and under the law *as it is*—not as you interpret it,

but as you find it. Neither we nor you are law-makers or interpreters; and you cannot, *under your oaths*, do aught else than decide the facts and apply the law as it is given to you, or as it is. No *higher* or *lower* law exists in this Commonwealth than that law which has been duly made by your representatives in accordance with the Constitution. No "*law of nature*" exists to absolve you from your invocation of the Almighty that you will "well and truly try and a true deliverance make" according to the evidence under and in conformity to law.

Neither we nor you are vested with plenary powers, allowing us or you to apply one exposition of law to one person and another exposition of the same law to another person charged with the same offence. Your duty is to try a cause applying the *law* of this Commonwealth as you find it upon the statute-book to its decision. It is not for us or you to judge what we or you might or would have done under certain circumstances, but what has the defendant done, if he has done anything; what grade of offence has been committed, if any; and what verdict is to be legally affixed. The very foundations of free government are based upon a reverence for and recognition of the supremacy of the law. A denial of its superior control and binding obligation is not only destructive of free government, but irresistibly reverts man to red-handed anarchy, which is next to barbarism, or to that barbarism which makes might right; sacrificing the weak and the helpless to the rapacity and brutality of the strong.

Having said this much in respect to the relations and duties of this tribunal, I shall endeavor to lay before you such rules and principles as should govern your deliberations, and which, under the obligation of my oath, I believe incumbent upon me to give in response to the request of the Commonwealth's attorney.

To the first point submitted by the Commonwealth's attorney we instruct, *as desired*, and say to you that—

"If the jury believe from the evidence in the cause that the gun from which the leaden bullets were discharged and aimed at, and actually penetrated, the body of the deceased, as described in the indictment, was so aimed and discharged by the prisoner at the body and person of the deceased with the intent, previously formed, then and there to cause the death of the deceased, on deliberation, as charged in the indictment, then they must find a verdict responsive to the charges as laid in the indictment."

As to the second point, which is as follows:

"If the jury believe from the evidence in the cause that the prisoner, from preconceived motives, formed on deliberation, actually laid in wait and deliberately secreted himself, with the deliberately formed purpose then and there to shoot, and by so shooting, to cause then and there the death of the deceased on the 24th day of November, 1868, as charged in the indictment, for any supposed or actual provocation which, from the evidence in the cause, was brought directly to the knowledge of the prisoner as early as the 21st day of November, 1868, then they are instructed that sufficient cooling time had occurred between the 21st and the 24th day of the said month for all passion to subside, in the eyes of the law, and they cannot consider the alleged provocation in extenuation or mitigation of the felony as alleged in the indictment."

We say to the jury that *reasonable* time for cooling had occurred; but that no special time for cooling has been or can be ascertained by absolute rule of law. The true doctrine upon this subject is that each case must stand upon its own merits, as affected by the circumstances. Both the

questions of what is "sufficient cooling time," and what is "sufficient provocation," are matters of law and not of fact. Like all other questions of law, however, they are found practically involved in inquiries of or concerning facts, and as such must be passed upon by the jury. The only positive rule which we can lay down for your guidance upon this subject is: "That if the actual furor of mind does not exist, or does not impel the arm which inflicts the fatal blow, there is no excuse from passion." It must be observed here that both the questions concerning provocation and cooling time arise out of a presumed state of intense, uncontrollable, and unreasonable passion, which does for the time inhibit the exercise of reason and judgment. If no passion of such nature existed, or if the jury believe from the evidence that sufficient cooling time had occurred between the 21st and 24th days of November, 1868, to allow and enable the prisoner to judge his motives and actions, then we affirm the other proposition of said charge as stated by the Commonwealth's attorney.

The third point presented is that—

"If the jury believe, from the evidence in the cause, that the alleged provocation was brought home to the knowledge of the accused, and he, acting on it, not under the sudden and violent impulse of the moment, but upon the deliberation and after consultation and advisement, and as a means of carrying out and perfecting his designs so formed, procured the entrance to and occupation of the room from which the gun was so discharged, as alleged in the indictment, then such procurement, occupation, and use of the said room is evidence to ascertain and settle the motive with which said room was so procured, occupied, and used."

This is affirmed and given to you as a correct and proper rule upon the subject of inquiry as stated. The fourth point submitted is:

"That if the jury believe from the evidence in the cause that the prisoner deliberately formed the intention to take the life of the deceased, and, as a sure and safe means of carrying into effect his purpose thus deliberately formed, procured the entrance to and occupation of the room from which the gun was discharged and aimed at the deceased by the prisoner, then such procurement, occupation, and use of the said room is evidence of deliberation and lying in wait, and excludes the legal presumption of all or any provocation."

We affirm this proposition also, so far as it asserts such facts, if believed, to be evidence of deliberation; and, if you further should be satisfied from the evidence in the cause that the prisoner also did occupy said room, there awaiting the coming of the deceased for the purpose of killing him, that such facts, in connection with those stated in the fourth point, would be legal evidence of "*lying in wait*," and excluding the legal presumption of heat of blood at the time. As thus explained only the point is affirmed.

Point five is that—

"If the jury believe from the evidence in the cause that the prisoner formed and deliberately designed to take the life of the deceased on the 21st day of November, 1868, and watched his opportunity and laid his plans on deliberation and consultation until the 24th day of November, 1868, and then, from a room procured for the purpose, secretly, deliberately, and advisedly discharged the gun, as alleged in the indictment, they must find the prisoner guilty as charged in the indictment."

And this proposition is *fully affirmed* and committed to you as the law governing this question, under the circumstances stated. Any willful, deliberate, and premeditated killing is murder, says the *words* of the law of Virginia, and we cannot change them or give them any meaning other than the words import.

The sixth and last proposition upon which we are desired to give you instruction is that—

"If the jury believe from the evidence in the cause that the gun which was discharged, as alleged in the indictment, was so discharged by the prisoner on deliberation and advisement, however great the provocation, if there was sufficient time for the passions to subside and reason to control the acts of the prisoner, they are instructed to disregard the provocation as the moving cause to the act imputed."

This point, also, is affirmed, and the jury are so instructed. We say to this jury now that their bounden duty under the law, and the obligation they have assumed, is to ascertain whether the evidence shows that the prisoner at the bar is guilty of the crime charged in the indictment as therein stated. If they find, upon careful and candid consideration, that its statements are proven beyond a reasonable doubt, then they must redeem their pledge, and render a verdict in accordance with the facts. No rule or principle of law has ever been found in the legal tomes which excused or justified the commission of murder in answer to a libel or slander. The law does not allow courts or juries to recognize any such claim of rights, and we expressly disavow such assumption as a cloak for crime.

Neither can we leave uncorrected the grave proposition, for the first time heard in courts of law, that "the atrocity of a libel, or the circumstances under which it was published, take away from the homicide every attribute and characteristic of murder," if such murder was done by lying in wait, or wilfully, deliberately, and premeditatedly.

If these facts are established, no law of God or man admits of their ignoring or avoidance. Courts and juries are to *administer* law, not invent or evade it. The evidence must be such as satisfies your minds of the truth of the allegations of offence in all material particulars, and if it be circumstantial, must be such as excludes every hypothesis except that of guilt. The evidence, whether positive or circumstantial, must satisfy your minds of its conclusive character. We instruct you distinctly that the decision of the *facts* is solely and exclusively for you, and with you alone is the responsibility for their correct decision. No word that we or any other person may have uttered concerning the facts should have the slightest influence except as they are approved by your judgment. Yourselves alone must adjudge the value, and ascertain the legitimate and proper weight, and having done so, announce your decision according to the evidence.

The presumption of innocence attaches to the prisoner at the bar until the evidence in the case satisfies you (affirmatively) that the offence alleged in the indictment was committed by him; and such evidence must satisfy you beyond a reasonable doubt growing out of the evidence that all the facts alleged in the indictment are true. The doubt must be a doubt growing out of a fair and candid consideration of the evidence—not suppositions merely; and having so considered, may you justly and truthfully decide under the law and the evidence.

We commend this cause and all its important issues to society, the Commonwealth, and the prisoner at the bar, to your deliberate and just finding.

Having retired for about forty minutes, the Jury came into court, and returned a verdict of NOT GUILTY! Whereupon the prisoner was released; a number of his friends applauding in the court-room, which demonstration the Judge checked.

APPENDIX.

SUPPRESSED LETTERS TO THE NEW YORK HERALD.

To the Editor of the New York Herald.

I was pained to read in your edition of the 8th instant an editorial paragraph, wherein, referring to the acquittal of the person who took the life of my brother by Assassination, you make an allusion to "black-mailing". The allusion is unjust; it is cruel; I can only hope it proceeded from inadvertence or misinformation.

It is true that an attempt was made on the trial to vilify my dead brother, as if public justice was therefore to be diminished—a false and horrid argument! But if you had examined the *evidence*, you would have found that the charge of "black-mailing" not only broke down, but that it recoiled upon those who attempted this foul diversion on the memory of the dead. It was shown in evidence that my brother, to the last, to the moment of his death, firmly believed to be true the delinquency of the female, whose name need not be mentioned here; that he had had nothing to convince him to the contrary, but the protestation of Stover—he a single witness, and interested as a friend of the Grant family, as against the several disinterested witnesses from whom my brother had obtained the information; that, as to propositions of money, my brother never sought the Grant family or any of their friends; that, on the contrary, they sought him, pursued him, and that he even once rebuffed their pursuit (as when he refused to see Mr. Stover at his house); that my brother, when once asked by Stover if pecuniary consideration would avail to suppress the article, answered distinctly, "*No*";

that he did refuse the offer of Stover to replace the article by a 100 dollar advertisement; that he repeatedly offered to the Grant family the unlimited use of his columns, to refute the article, if it was false; and that, at the last, concerning a proposition to sell an interest in his paper, that Grant might control its publication, he expressly stipulated that it should be assessed by three disinterested persons. How, in the name of Truth, can such conduct be construed as an attempt to "black-mail"—especially in view of the circumstance that my brother repeatedly offered to print, word for word, whatever the Grant family might have, in the way of evidence, to refute his charges! Certainly, if he had proposed to extort money, he would never have suggested and offered an antidote to the injured party. A man, actuated by such vile motives would have proposed only the harshest and most exacting conditions, would have done all he could to persuade the complainants that they were remediless, and most assuredly would never have freely offered a swift and equal opportunity to disprove his accusation.

Look into the evidence, and judge if these facts are not literally as reported above. I ask their publication *in justice to the dead.* I know no more powerful and purer appeal to touch your heart.

As to those who vilified my dead brother, on the trial of his murderer, I have neither resentment nor contempt; feeling only a sovereign pride in my own sense of superiority over those who could take upon their consciences and hearts the awful crime of *murdering* the memory of the dead, to defeat the end of justice in the case of an Assassin.

Whatever the faults of my brother, he was immeasurably above the suspicion of a bribe; he was angered and embittered by frequent attacks of neighboring journals upon himself; he was eager to retaliate upon whatever he could find of vice or immorality in a community which had been severe upon him; he committed many errors of temper; but I believe he had rather be asleep now in his blood-stained grave, than to have done the act of his Assassin, or to have adopted the device of his accusers.

EDWARD A. POLLARD.

March 10th, 1869.

LYNCHBURG, VA., *March 19th, 1869.*

MR. JAMES GORDEN BENNETT,

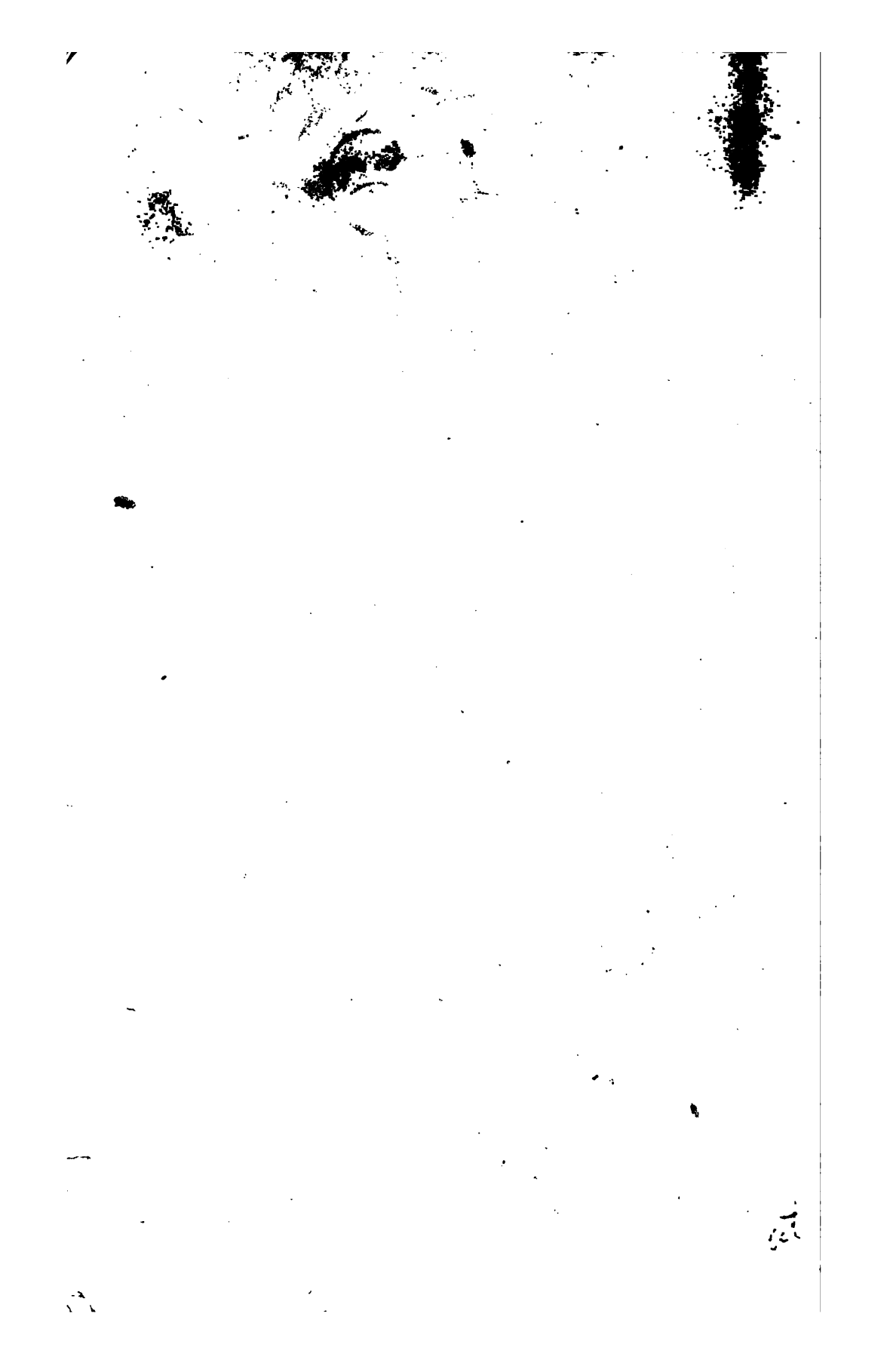
SIR,—It appears that you refuse me the justice of publishing a reply to an article in which you attacked the memory of the dead—the dead, my brother—and the reply asking nothing more than a reference to the *evidence*, a brief publication of which was invoked, as from the violated precincts of the grave. There was no improper language in the reply sent you; no excess of those rules of moderation and propriety, imposed upon those who desire to make communications to the public through the press; it was neither a vague nor unscrupulous statement since it appealed to the *evidence;* nor was it written on a slight or unnecessary occasion, for it came from a heart mourning the death of a murdered brother, and charged by nature to defend his memory.

Whether the suppression of this reply was caused by your direct orders, or whether it originated in some malice towards the dead, entertained by some of the subordinates in your office, I do not know. I am content to leave to the retributions of God and the adjudication of his own conscience the man who could injure and revile the memory of the dead, and take a secret satisfaction in suppressing what an afflicted and mourning brother wrote in vindication of it.

Yet, I must say, of all my experience of rude and cruel denials of the press, when I have sought anything like justice from it, the conduct of your paper in the instance referred to has been unequalled and unapproached. My self-respect and my natural feelings compel me to say this much, before I dismiss the unhappy occasion which forced me into correspondence with you.

Yours, &c.,

EDWARD A. POLLARD.



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